

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
DEL RIO DIVISION**

MARIA E. MARKOWITZ CROY,  
Individually and as Personal Representative  
of the Estate of JAMES PAUL  
MARKOWITZ, Deceased; and AALIYAH  
BRITTANY SOTO, as Next Friend of  
P.J.M. a Minor Child,

*Plaintiffs,*

v.

UNITED STATES OF AMERICA,

*Defendant.*

Civil Case No. DR:22-CV-005-AM-VRG

**DECLARATION OF ELBERT ORTIZ**

I, Elbert Ortiz, pursuant to 28 U.S.C. § 1746 depose and say:

1. I am a Staff Attorney in the Office of Assistant Chief Counsel, Del Rio, Texas, United States Customs and Border Protection, Department of Homeland Security (CBP), and have held this position since 2020.

2. In this capacity, I serve as a legal adviser to the CBP operations throughout the Southwest border, rendering legal advice and assistance to CBP officers and employees located at the Eagle Pass and Del Rio Ports of Entry, as well as the Border Patrol Agents located in the Del Rio Sector.

3. CBP is a separate and distinct Federal agency from U.S. Immigration and Customs Enforcement (ICE). Although both agencies are divisions of the same United States executive department (Department of Homeland Security), CBP operations do not involve ICE. Likewise, in my capacity as Staff Attorney for the CBP Counsel organization, I do not work for ICE and my work does not involve ICE. I cannot access ICE databases or information.

4. One responsibility to CBP is to render legal advice regarding claims filed pursuant to the Federal Tort Claims Act (28 U.S.C. § 2671, *et. seq.*) (“FTCA”).

5. Pursuant to 28 U.S.C. § 2672, the head of a federal agency or his designee, in accordance with regulations prescribed by the Attorney General, is authorized to consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

6. The Chief Counsel Tracking System (“CCTS”) is an electronic case tracking system used by all CBP Counsel offices nation-wide to open and track cases assigned to each office within the CBP Counsel organization.

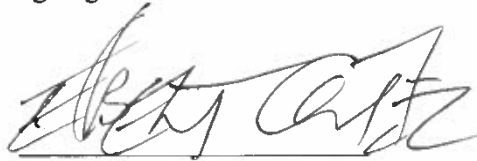
7. If Plaintiffs had filed a claim against CBP pursuant to the FTCA, it would have been forwarded to our office, the Assistant Chief Counsel for Del Rio, Texas, for appropriate action. Upon receipt of any such claim, our office—like any CBP Counsel office—would have opened a case regarding the claim and entered the case under the name of the person who filed the claim into the CCTS tracking system.

8. As a Staff Attorney for the CBP Counsel organization, I have access to CCTS and have the capability to search the nation-wide database to determine if a case has been opened in the tracking system under any particular name in any CBP Counsel office throughout the country, including the Office of Assistant Chief Counsel, Del Rio.

9. On August 9, 2022, I conducted a search of CCTS querying the plaintiffs’ names and the name of the deceased individual for whom the plaintiffs bring a survival action. I have determined that CCTS contains no records of any claims filed by Plaintiffs under the FTCA in the Office of Assistant Chief Counsel, Del Rio, or any other CBP Counsel office.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9<sup>th</sup> day of August, 2022.

A handwritten signature in black ink, appearing to read "Elbert Ortiz", written over a horizontal line.

Elbert Ortiz  
Staff Attorney  
Assistant Chief Counsel  
U.S. Customs and Border Protection  
Del Rio, Texas